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The Public Service Commission State of South Carolina

193413

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June 13, 2008

Certified Mail -Return Receipt Requested

John J. Pringle, Jr., Esquire
Ellis, Lawhorne & Sims, P. A.
Post Office Box 2285
Columbia, SC 29202

Nanette S. Edwards, Esquire
Office of Regulatory Staff
1441 Main Street, Suite 300
Columbia, SC 29201

Re: Application of First Choice Technology, Inc.
Commission Docket No. 2007-393-C

Dask

Dear ~~John~~ and Nanette:

Enclosed please find a proposed order in the above-captioned docket, which is being delivered to you pursuant to the requirements of 26 S.C. Code Ann. Regs. 103-841(C). As parties of record in this First Choice case, you have ten (10) days from your receipt of this proposed order to file exceptions, present briefs, and/or file written requests for oral argument to the Commission, if you should desire to do so. If none of these are received by me within 10 days of your receipt of the proposed order, I will request that the Commission issue its order in this case based upon the record of the formal proceeding and the proposed order.

Thank you in advance for your consideration in this matter.

Sincerely,

F. David Butler
Hearing Examiner

FDB/dd
Enclosure

cc: Joseph Melchers, Chief Legal Advisor
Douglas Pratt, Advisory Staff

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2007-393-C - ORDER NO. 2008-
JUNE 13, 2008

IN RE: Application of First Choice Technology,	)	ORDER GRANTING
Incorporated for a Certificate of Public	)	CERTIFICATE AND
Convenience and Necessity to Provide Resold	)	APPROVING MODIFIED
Intrastate Interexchange Telecommunications	)	ALTERNATIVE
Services within the State of South Carolina	)	REGULATION-
and for Alternative Regulation	)	PROPOSED ORDER OF
	)	THE HEARING
	)	EXAMINER

This matter comes before the Public Service Commission of South Carolina (“Commission”) by way of the Application of First Choice Technology, Inc. (“First Choice” or the “Company”) requesting a Certificate of Public Convenience and Necessity authorizing it to provide resold interexchange telecommunications services within the State of South Carolina. The Company’s Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 2007) and the rules and regulations of the Commission. By its Application, First Choice also requests alternative regulation of its business interexchange services consistent with Commission Orders, and waiver of certain Commission regulations.

The Commission’s Docketing Department instructed First Choice to publish, one time, a Notice of Filing in newspapers of general circulation in the areas of the state affected by the Application. The purpose of the Notice of Filing was to inform interested

parties of the Application of First Choice and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. First Choice complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. No Petitions to Intervene or Protests were filed.

Subsequently, First Choice and the Office of Regulatory Staff (ORS) filed a Settlement Agreement attached hereto as Order Exhibit 1. A letter from Mr. Tom Allen of ORS outlining the Company's agreement to adopt certain tariff revisions is attached hereto as Order Exhibit 2. A hearing was convened on June 9, 2008, at 10:00 a.m. in the offices of the Commission in Columbia, South Carolina, before David Butler, Hearing Examiner. First Choice was represented by John J. Pringle, Jr., Esquire. The Office of Regulatory Staff ("ORS") was represented by Shannon Bowyer Hudson, Esquire.

Scott Howsare, President of the Company, testified in support of the Company's Application. The record reveals that First Choice is a corporation organized under the laws of the State of Delaware, which is registered to transact business in South Carolina. According to Mr. Howsare, the Company seeks authority as a reseller of interexchange services. Mr. Howsare explained the Company's request for authority, and the record further reveals the Company's services, operations, and marketing procedures. The Company intends to market interexchange services. Mr. Howsare also discussed First Choice's technical, financial, and managerial resources to provide the services for which it seeks authority.

With regard to technical, financial, and managerial capabilities, the Company's Application and Mr. Howsare's testimony both evidence that First Choice's management

has extensive experience in telecommunications, information technology, regulatory matters, and accounting and finance. Mr. Howsare also testified that First Choice will operate in accordance with Commission rules, regulations, guidelines, and Commission Orders. Mr. Howsare offered that approval of First Choice's Application would serve the public interest.

Mr. Howsare, on behalf of the Company, requests a waiver of 26 S.C. Code Ann. Regs. 103-610, since the Company's books are maintained in another state.

After consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. First Choice is organized under the laws of the State of Delaware as a corporation, and is authorized to do business in South Carolina by the Secretary of State.
2. First Choice desires to operate as a provider of resold interexchange services in South Carolina.
3. We find that First Choice possesses the managerial, technical, and financial experience and capability to operate as a provider, through resale, of interexchange services in South Carolina.
4. We find that the issuance of a Certificate of Public Convenience and Necessity to First Choice to operate as a reseller of interexchange services in South Carolina would be in the best interest of the citizens of South Carolina by providing more innovative services.

5. First Choice requests a waiver of 26 S.C. Code Ann. Regs. 103-610. The Commission finds First Choice's requested waiver reasonable and understands the potential difficulty presented to First Choice should the waiver not be granted.

6. The Company has the managerial, technical, and financial resources to provide the services as described in its Application.

CONCLUSIONS OF LAW

1. The Commission concludes that First Choice possesses the managerial, technical, and financial resources to provide the telecommunications services as described in its Application.

2. The Commission concludes that the issuance of the authority to provide intrastate interexchange telecommunications services as requested by First Choice and as set forth in its Application and Mr. Howsare's testimony is in the best interests of the citizens of the State of South Carolina.

3. The Commission concludes that a Certificate of Public Convenience and Necessity should be granted to First Choice to provide resold intrastate interexchange telecommunications services.

4. The Commission adopts a rate design for First Choice for its residential interexchange services, if any, which include maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. *In Re: Application of GTE Sprint Communications Corporation, etc.*, Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

5 First Choice shall not adjust its residential interexchange rates for end-users, if any, below the approved maximum level without notice to the Commission and to the public. First Choice shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. *In Re: Application of GTE Sprint Communications, etc.*, Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for residential interexchange services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp.2006).

6. The Commission concludes that First Choice's intrastate interexchange business telecommunications services shall be regulated in accordance with the principles and procedures established for alternative regulation of business service offerings set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. The Commission has previously granted this "alternative regulation" to competitive intrastate interexchange carriers operating within South Carolina, and the Commission concludes that the competitive marketplace requires the Commission to allow this flexible regulation to those carriers which request it. Specifically, the Commission-approved alternative regulation allows business service offerings, including consumer card services and

operator services, to be subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C.

However, pursuant to Order No. 2001-997 (Docket No. 2000-407-C), this Commission has modified alternative regulation by the re-imposition of rate caps with regard to certain “operator-assisted calls” where a customer uses a local exchange carrier’s calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission.

7. We conclude that First Choice’s request for waiver of 26 S.C. Code Ann. Regs. 103-610 should be granted as strict compliance with the regulation would potentially cause undue hardship on that Company. The waiver is not contrary to the public interest.

8. The Settlement Agreement between the Company and ORS should be approved.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

1 A Certificate of Public Convenience and Necessity should be granted to First Choice to provide intrastate interexchange services through the resale of services authorized for resale by tariffs of carriers approved by the Commission within the State of South Carolina.

2 The Company's rate designs for its products shall conform to those designs described in Conclusions of Law above.

3 If it has not already done so by the date of issuance of this Order, First Choice shall file its revised tariff utilizing the Commission's e-filing system for tariffs. The revised tariff should be electronically filed in a text searchable PDF format using the Commission's DMS System (<http://dms.psc.sc.gov>). An additional copy should be sent via email to etariff@psc.sc.gov to be included in the Commission's ETariff System (<http://etariff.psc.sc.gov>). Future revisions to the tariff should be made using the ETariff System. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations, as well as the provisions of the First Choice-ORS Settlement Agreement and the subsequent agreement between the two as outlined by the letter from ORS tariff supervisor Tom Allen.

4. The Company's service is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers and facilities-based interexchange carriers should be treated similarly.

5. With regard to the Company's resale of service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

6. First Choice shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If First Choice changes underlying carriers, it shall notify the Commission in writing.

7. With regard to the origination and termination of toll calls within the same LATA, First Choice shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the FCC pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209). Specifically, First Choice shall comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph 4 of the Stipulation and Appendix B approved by Order No. 93-462.

8. First Choice shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, First Choice shall keep financial records on an intrastate basis for South Carolina to comply with the annual report and gross receipts filings. The proper form for filing annual financial information can be found at the Commission's website at the ORS's website at www.regulatorystaff.sc.gov. The title of this form is "Telecommunications

Company Annual Report.” This form shall be utilized by the Company to file annual financial information with the Commission and ORS and shall be filed no later than **April 1st**.

Commission gross receipts forms are due to be filed with the Commission and ORS no later than **August 31st** of each year. The proper form for filing gross receipts information can be found at the ORS website at www.regulatorystaff.sc.gov, and the appropriate form is entitled “Gross Receipts Form.”

Each telecommunications company certified in South Carolina is required to file annually with the ORS the Intrastate Universal Service Fund (“USF”) worksheet, which may be found on the ORS’s website at www.regulatorystaff.sc.gov. This worksheet provides ORS information required to determine each telecommunications company’s liability to the State USF fund. The Intrastate USF worksheet is due to be filed annually no later than **July 1st** with the Commission and ORS.

9. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests, and repairs. In addition, the Company shall provide to the Commission and ORS in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. First Choice shall file the names, addresses, and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The “Authorized Utility Representative Information” form can be found at the ORS website at

www.regulatorystaff.sc.gov; this form shall be utilized for the provision of this information to the Commission and ORS. Further, the Company shall promptly notify the Commission and ORS in writing if the representatives are replaced.

10. The Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

11. At the hearing, First Choice requested a waiver of 26 Code Ann. Regs. 103-610 (Supp. 2007). The Commission finds First Choice's requested waiver reasonable and understands the potential difficulty presented to First Choice should the waiver not be granted. The Commission therefore grants the requested waiver. However, First Choice shall make available its books and records at all reasonable times upon request by the Office of Regulatory Staff, and First Choice shall promptly notify the Commission and ORS if the location of its books and records changes.

12. The Settlement Agreement between First Choice and ORS is hereby approved.

13. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

G. O'Neal Hamilton, Chairman

ATTEST:

C. Robert Moseley, Vice Chairman

(SEAL)

BEFORE
THE PUBLIC SERVICE COMMISSION
OF
SOUTH CAROLINA

DOCKET NO. 2007-393-C

IN THE MATTER OF:	)	CERTIFICATE OF SERVICE
Application of First Choice Technology, Inc. for a	)	(BY CERTIFIED US MAIL)
Certificate of Pubic Convenience and Necessity	)	(Return Receipt Requested)
To Provide Resold Intrastate Interexchange)	
Telecommunications Services within the State)	
of South Carolina)	

I, Dale E. Davis, do hereby certify that I have on the date indicated below served the following named individual(s) with one (1) copy of the pleading(s) listed below by causing said copies to be deposited with the United States Postal Service, by certified mail, return receipt requested, postage prepaid and addressed as follows:

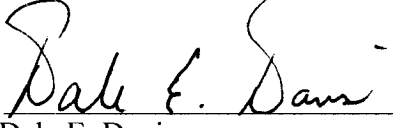
PARTIE(S) SERVED:

John J. Pringle, Jr., Esquire
Ellis, Lawhorne & Sims, P.A.
Post Office Box 2285
Columbia, SC 29202

Nanette S. Edwards, Esquire
Office of Regulatory Staff
1441 Main Street, Suite 300
Columbia, SC 29201

PLEADING(S): ORDER GRANTING CERTIFICATE AND APPROVING
MODIFIED ALTERNATIVE REGULATION – PROPOSED ORDER OF THE
HEARING EXAMINER

Public Service Commission of SC

By: 
Dale E. Davis

Columbia, South Carolina
June 13, 2008